

SPECIAL CIVIL APPLICATION No 7158 of 1995

SPECIAL CIVIL APPLICATION No 7933 of 1995

Hon'ble MR.JUSTICE R.K.ABICHANDANI

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

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[illegible]

Versus

Appearance:

1. Special Civil Application No. 7158 of 1995
MR KB PANDE for Petitioners
Mr. S.N.Shelat, Addl. Advocate General with Mr.
D.A.Bambhania, Solicitor to Government for respondents.
2. Special Civil Application No 7933 of 1995
MR KB PANDE for Petitioners
Mr. S.N.Shelat, Addl. Advocate General with Mr.
D.A.Bambhania, Solicitor to Government for respondents.

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 24/06/96

ORAL JUDGEMENT

The petitioners in both these petitions have challenged the final eligibility list of the employees who have passed the Lower Revenue Qualifying Examination (LRQE) and Higher Revenue Qualifying Examination (HRQE), published under the Government Circular dated 9th March, 1995 as per Annexure "A" in both these petitions. Special Civil application No. 7158 of 1995 was filed on 21st August, 1995 and the six petitioners of that petition have also challenged their reversion order dated 6.9.1995. The petitioners of Special Civil Application No. 7933/95 have also challenged their reversions under the order dated 6.9.1995. These reversions are from the post of Mamlatdars to which they were appointed on adhoc basis to the Deputy Mamlatdars' post.

The petitioners belong to the Subordinate Revenue Service. Initially, they belonged to the Lower Division of the Subordinate Revenue Service and by passing the Lower Revenue Qualifying Examination, they became qualified to be appointed in the Upper Division of the Subordinate Revenue Service. The Subordinate Revenue Service as defined under the Rules includes persons appointed as Clerks, Circle Inspectors and Typists in the Lower Division and Deputy Mamlatdars and Circle Officers in the Upper Division. The post of Mamlatdar is a Post higher to the posts in Upper Division of the Subordinate Revenue Service. Those aspiring to become Mamlatdars are required to pass the Higher Revenue Qualifying Examination. There are two sets of Rules for regulating conditions of service of persons recruited in Revenue Subordinate Service in so far as they relate to passing of the Gujarat Lower Revenue Qualifying Examination and the Gujarat Higher Revenue Qualifying Examination. The Gujarat Lower Revenue Qualifying Examination Rules were published under the Notification dated 18.3.1978 and the Gujarat Higher Revenue Qualifying Examination Rules were published under the Notification dated 1.1.1980. Of these, the Gujarat Lower Revenue Qualifying Examination Rules, 1978 became subject matters of intense controversy in earlier proceedings and the Constitutionality of the rules which were challenged earlier was upheld by the Division Bench of this Court in a group of petitions, Special Civil Application No.2860 of 1983 etc. decided on 16.12.1983, which decision came to be confirmed by the Supreme Court in Civil Appeal No. 1675 of 1984 and other

matters decided on 2.5.1986. Two petitions as a sequel of that decision - Special Civil Application No. 4615/86 and Special Civil Application No. 4744 of 1986 came to be considered and decided by the Division Bench on November 7, 1990, reaffirming the earlier decision.

In the group of matters which was decided on 16.12.1983, the Court had given certain directions stating that the District Collector concerned should prepare the seniority list on the principles indicated therein in each of the Districts. This was necessary because the cadre of Deputy Mamlatdars which was in the Upper Division of the Subordinate Revenue Service is a District level cadre. The Collectors were given a direction to arrange seniority in the case of Deputy Mamlatdars of the concerned persons and other eligible persons under their respective Collectorates in the light of these directions. It was also directed that having arranged seniority of concerned employees accordingly, proper orders of reversion will have to be passed by the concerned authorities. As per the principles laid down for preparing the seniority list which were to be followed by the District Collectors, the clerks who had passed the qualifying examination i.e. LRQE within the specified period and specified chances were entitled to rearrangement of seniority inter-se with the persons of their own class on the basis of Rule 9. Those who were senior to them but had passed the examination subsequently and beyond the specified period and chances were held to have no claim over those who fall under Rule 9. Those who fall under Rule 9 become eligible for promotion when they acquire qualification by passing the examination and that day should determine their eligibility in the matter of promotion. It was held that there was no question of readjustment as between persons of their class and persons who may be senior to them, but who passed the examination subsequently beyond the specified period and chance. It was directed that the seniority of those who passed beyond the specified chances and period will depend on the date of eligibility and that in turn being the date of their acquiring the examination qualification. Therefore, first they have to be ranked on that basis and thereafter, adjustment has to be made by placing such seniors in the clerical cadre who have passed examination later over their juniors in the same class, subject to the rule that they would not get their seniority as against those juniors who have not only passed but have actually been promoted. As regards those who have not passed the examination, it was held that they had no claim in the list and therefore, they need not be ranked and their reversion could be effected

even before preparing the final list. The Collectors were expected to prepare the lists as per the guidelines within a period of three months from the date of the receipt of the writ by the Government. In the decision rendered on November 7, 1990, the Division Bench negatived the challenge against the list prepared by the Collector, Valsad and in the process held that the persons who had passed the LRQE beyond the stipulated chances and period (described as 'late latifs' in the judgement) would generally be treated as senior to regulars i.e. those who passed it within the prescribed chances later on, subject to operation of Rule 9 of the LRQE Rules. It was held that such late latifs will be treated as senior to regulars passing in the same examination subject to the rider that if on account of operation of Rule 9 of LRQE Rules, a regular who pass subsequently is to be placed above a regular who might have passed earlier and in carrying out that exercise, if seniority positions of late latifs are to be adversely affected and the latter are to be pushed down, then it would be a permissible exercise. It was held that when the question of fixing inter-se seniority of clerk, clerk-cum-typist and typist for the purpose of eligibility for promotion to the post of Deputy Mamlatdar crops up in the light of result of a given Departmental Examination, the following steps have to be taken by the concerned authorities:-

(1) It has to be first ascertained whether there are clerks who have passed the examination within specified chances and specified period and who may be treated as regulars;

(2) To ascertain whether in the aforesaid category of clerks, there are any clerks who may be required to be subjected to rule 9 while fixing their inter-se seniority, as eligible clerks fit for promotion to the cadre of Deputy Mamlatdar.

(3) If such operation of 9 qua regulars is to be pressed in service, then to that extent, late latifs will have to be pushed down in seniority while fixing their eligibility for promotion to the post of Deputy Mamlatdar.

(4) If such operation of rule 9 qua regulars is not attracted, then parent seniority of clerks in the combined cadre of clerks, clerk-cum-typists and typists will be pressed in service for fixing inter-se seniority of regulars on the one hand and late latifs on the other.

(5) So far as late latifs are concerned, their seniority for the purpose of eligibility for promotion will be worked out subject to operation of proviso to rule 7 amongst the late latifs only.

It was held that these five steps will have to be taken every time when inter-se seniority of eligible clerks for promotion to the post of Deputy Mamlatdar's cadre is to be fixed and reshuffled in the light of results of concerned examination taken from time to time.

It was held that this may result in pushing down of late latifs in subsequent seniority list in the light of subsequent examination results by new comers - regulars subject to the rider that this pushing down by new comers - regulars will be confined to result of two succeeding examinations only following the current examination where the concerned late latifs passed the examination and extending to a further period spread upto two more such successive examination and not beyond that period.

Thereafter, Special Civil Applications Nos. 2224/93 and 2213/93 which also had a bearing on the question of preparation of the list of such qualified persons and their inter-se seniority came up for consideration before Hon'ble Mr. Justice N.J. Pandya and by an order dated October 26, 1994 while disposing of these petitions, it was directed that while preparing the list of eligible candidates, the concerned authorities shall also have to bear in mind over and above the said requirement (of preparing the District-wise seniority of Deputy Mamlatdars) in the light of the earlier judgements and the Rules, the requirement of HRQE Rules. It was noted that seniority list was not prepared in time and the vexed question of Scheduled Castes and Scheduled Tribes candidates was being considered and that the provisional list was prepared as on Feb., 1994 to which objections were invited in response to which more than 800 objections were received. It was further observed that this necessarily involved exercise of examination of each of the claims and in the meantime there might be occasions either to promote or to revert somebody on account of the exigencies of the Department or on account of the post falling vacant on regular basis. It was observed that "in either event or even for the purpose of carrying out the aforesaid exercise, the aspects mentioned above namely continuous officiation, LRQE as well as HRQE, as the case may be in respect of each of the candidates will have to be considered and if circumstances so warrant applied". It was directed that the concerned authorities should "specifically bear in mind the requirement of HRQE Rules when dealing with the

aspect of preparing the list for eligible candidates and promoting a person therefrom or reverting a person from the post of Mamlatdar and the Department shall act on the basis of various judgements that are pronounced by the Court pertaining to implementation of roster, LRQE Rules, date of continuous officiation and as indicated earlier, wherever required HRQE Rules also". It was also observed that person who ought to have promoted earlier but were left out would be given a deemed date and the persons who should not have been promoted earlier, but were promoted can be reverted strictly in accordance with the Rules.

After the above directions were given by Hon'ble Mr. Justice N.J. Pandya on 26th October, 1994, the Government has published the impugned list of the persons who had passed Lower Revenue Qualifying Examination and the Higher Revenue Qualifying Examination. This list is in reality an eligibility list prepared for the purpose of giving promotion to the higher post of Mamlatdar and it consists of the persons working as Deputy Mamlatdars in different Districts, who had passed both the LRQE and the HRQE under the said Rules. The list is prepared with a view to give promotions to the posts of Mamlatdar in respect of vacancies which arose during the period from 1977 - 1991 as stated in the last paragraph of the circular dated 9th March, 1995, under which this list was published.

The eleven petitioners of these two petitions are persons who had passed the LRQE as well as the HRQE within the specified chances and period. Their grievance is that they are not assigned their rightful higher place in the eligibility list as a result of which they have now come to be reverted. The learned Counsel Mr. Pande appearing for the petitioners in both these petitions has strongly contended that the impugned list at Annexure "A" has been prepared contrary to the LRQE Rules and the HRQE Rules and it is in contravention of the guidelines which were given by this Court earlier, as also the decisions of the Supreme Court. It was submitted that there were several instances in this impugned list which showed that persons who had passed the Lower Revenue Qualifying Examination beyond the prescribed period were placed above those who had passed within the prescribed period and chances. It was contended that the employees who had passed the examination beyond the prescribed chances and period can never be placed above the employees who had passed within the prescribed chances and period. The former who are described as "late latifs" must be placed below all those who have passed within the prescribed chances and period. He submitted that the late latifs

who had passed LRQE after such regulars, but were shown higher in the impugned list have been referred in paragraph 8 of Special Civil Application No. 7158 of 1995. They are at serial Nos. 52, 60, 62, 64, 67, 100, 130, 133, 135, 150, 358, 388, 1080 - 1098, 1361, 1365, 1480 - 1482, 1566 and 1567. Besides these persons, he also referred to the fact that names of two employees appear twice at different serial numbers. The name of Mr. D.D.Wagh appears at serial Nos. 219 and 1969 and that of Mr. H.C. Shah appears at sr.nos. 119 and 359. He also referred to one Mr.J.R.Gadhvi at serial No. 154, and submitted that though he was a 'late latif' as shown in the list in passing the HRQE, his name was placed much above the regular passers. Referring to the 'late latifs' from the list he submitted that the petitioners were wrongly shown below them and were entitled to be placed above all such late latifs, because they had passed the examination in the prescribed chances and period. It was submitted that all the 'late latifs' should be placed below all the regulars at the bottom of the list. He submitted that the defects in the list indicated total non-applicability of mind in preparing it. He further argued that a mere look at the impugned list would show that the names are arranged according to the original seniority in the clerical cadre and no attempt was made to prepare the list as per the guidelines laid down by the Division Bench in the earlier decisions. He also argued that the petitioners were already promoted as Mamlatdars and there was therefore, no question of readjustment of inter-se seniority of the petitioners and those who were not yet promoted as Mamlatdars. He contended that no personal hearing was given to those who had objected against the provisional list. He has also contended that the petitioners who are Scheduled Castes and Scheduled Tribes persons were entitled to get promotion on roster points irrespective of inter-se seniority. It was argued that there could not have been any dereservation made of the seats which were ear-marked for Scheduled Castes and Scheduled Tribes. It was finally contended that before passing the impugned order of reversion, the petitioners were not given any hearing and therefore, the reversion orders were invalid.

The learned Additional Advocate General Mr.S.N.Shelat appearing for the authorities contended that the cadre of Deputy Mamlatdars was a District cadre while the cadre of Mamlatdars was a State cadre and therefore, the seniority in the Deputy Mamlatdar's cadre has to be viewed district-wise, on the basis of the seniority in Deputy Mamlatdar's cadre as fixed in

accordance with the LRQE Rules. The State cadre list is to be worked out for Mamlatdars' post on the basis of HRQE Rules. He submitted that the promotions which were earlier given to the Mamlatdars' post were all subject to the outcome of the petitions and the directions that may be given by the Court for preparing the list. He submitted that these petitioners who were being reverted were to be replaced by Scheduled Castes and Scheduled Tribes candidates, who were senior to them and who had also passed the examination within the prescribed chances and period and were senior to these petitioners. He submitted that the impugned list has been prepared keeping in view the guidelines given by the Division Bench earlier and the LRQE and HRQE Rules. Some errors which had crept in have been rectified by issuing orders on 4th June, 1996, a copy of which was placed on record and also supplied to the other side. The Government had issued the said communication to all the District Collectors pointing out the typing and other errors which had crept in through over-sight in the impugned list. The Government had also sought for information in respect of those who had passed the Higher Revenue Qualifying Examination after September, 1991, so that a further list of the Deputy Mamlatdars could be prepared. It was submitted by learned Additional Advocate General, that if any other obvious error is pointed out by the petitioners or any other interested person from the impugned list, the Government would consider the same and issue necessary corrections in consonance with the policy on the basis of which the list is prepared. It was submitted that all the 'late latifs' were not required to be placed below all the regulars as contended on behalf of the petitioners and the matter was to be decided in light of the guidelines given by the Division Bench, more particularly on 7.11.1990 in Special Civil Application No. 4619 of 1986, in this regard.

It will be noted from the impugned list that so far HRQE is concerned, all the incumbents upto serial No. 1946 have passed their HRQE within the prescribed chances and period. In the list, serial No. 154 - J.R. Gadhvi was shown to have passed the HRQE as a 'late-latif', but that was a mistake, which has been corrected as Mr. Gadhvi was in fact a regular who had passed the HRQE within the prescribed chances and period. Therefore, the argument which was developed with regard to Mr. J.R. Gadhvi on the footing that he was the late latif would not stand. The same is the case with serial No. 166 - D.R. Parekh, who was wrongly shown in the list to have passed the HRQE as a 'late latif', but, that mistake has now been corrected since he was really a regular who had passed the HRQE

within the prescribed chances and period. Therefore, so far the HRQE is concerned, no person who has passed the HRQE beyond specified period and chances is placed above any of the petitioners who have passed that examination within the specified period and chances. This is why at the hearing attack was concentrated on behalf of the petitioners on the 'late latifs' at the LRQE and it was contended that they could not have been shown above the petitioners who had passed the LRQE as regulars.

The direct recruits are required to pass the LRQE within the probational period of 2 years as per Rule 3 of the LRQE Rules and if a direct recruits fails to clear the examination within the specified period, the period can be extended to not exceeding 3 years if his service is otherwise satisfactory and he is required to pass the examination in not more than 3 chances in all. As regards the persons of Lower Division of Subordinate Service eligible for appointment to a higher post in the Upper Division, the requirement to pass the examination is laid down under Rule 4(1). Such a person is required to pass the examination after completion of five years of continuous service and within three years from the date he is granted permission to appear at the examination for the first time. Under Rule 5 the examination is to be passed in not more than three chances within the specified period. The chances availed of under the old Rules are to be counted as having been availed of under the said Rules of 1978. The Scheduled Caste and Scheduled Tribe persons are given one additional chance. Under Rule 6(1), service of a direct recruit not clearing the examination as required by the Rules, is to be terminated forthwith. The consequence as regards an incumbent of Lower Division of the Subordinate Revenue Service who does not clear the examination is provided in Rule 6(2) and accordingly, the unsuccessful incumbent loses his seniority as provided in Rule 7 and he will not be eligible for promotion to the Upper Division. He will also be not eligible for confirmation. However, on passing examination, he would become eligible for confirmation and promotion to the higher post as provided under Rule 7. Under Rule 7, a person passing the examination beyond the prescribed period who became eligible for confirmation and promotion could under the earlier proviso to Rule 7 not claim seniority over those who had passed the examination earlier. However, after 20.5.1982, the proviso to Rule 7 was substituted and such late qualifier is now not entitled to claim seniority over those who had been promoted before he became eligible for promotion. Under Rule 9 of the LRQE Rules, a person passing the examination in the specified period

and chances would retain his original seniority in the Upper Division even if his junior who had passed the examination was promoted earlier, to the higher post. From the wordings of Rule 9 it is clear that it would operate in context of the promotion to the higher post given earlier to a junior who had passed the examination within the prescribed chances prior to his seniors who have passed the examination later but within the prescribed chances. Under Rule 9(2), the inter-se seniority between seniors and juniors who have passed the examination within the prescribed chances is retained in the Upper Division. The post of Deputy Mamlatdars falls in the Upper Division. The said examination is ordinarily required to be held twice a year as provided in Rule 10. Rules 11 and 13 of the LRQE Rules have been deleted. Rule 19 of the LRQE protects the existing right of the candidates that may have accrued under the old Rules.

For promotion to a higher post from the Subordinate Revenue Service, a person of Upper Division of that service is required to pass the HRQE examination under the said Rules of 1980. He is required to pass such examination after completion of three years' continuous service and within the period of three years from the date he is granted permission to appear at the HRQE for the first time in accordance with Rule 10. Under sub-rule (3) which was added to Rule 3 by the Amending Rules of 1988, every person of a Subordinate Revenue Service who has completed five years' continuous service after the date of passing the LRQE is also eligible to appear at the HRQE. Thus, after this amendment, persons who are in the Subordinate Revenue Service though they may not be in Upper Division of that service also become eligible to appear at the HRQE on completion of five years' continuous service after the date of passing the LRQE. Subordinate Revenue Service is defined in Rule 2(i) and includes persons appointed as Clerks, Circle Inspectors, Typists in the Lower Division and the Deputy Mamlatdars and the Circle Inspectors in the Upper Division. The consequences of not passing the HRQE within the prescribed period are provided in Rule 5. Accordingly, an incumbent of any of the posts in Upper Division who does not pass the examination within the prescribed period loses his seniority as provided in Rule 6 and he would not be eligible for promotion to the post of Mamlatdar and for confirmation therein, until he passes the examination. As provided by Rule 6, though he would become eligible for confirmation and promotion to the higher post on passing the examination later on, he would not be entitled to claim seniority as per the

proviso to Rule 6. Under the said proviso, prior to 17.12.1994 such late qualifier could not claim seniority over those who had passed the examination earlier. However, after the substitution of that proviso on 17.12.1994, the disadvantage is to the effect that he shall not be entitled to claim seniority over those who have been promoted before he became eligible for the promotional post on account of their passing the examination earlier notwithstanding the fact that he was senior to the post for promotion. A person who cannot clear the HRQE within the specified chances and period, stands disqualified from holding the higher post and is required to be reverted. As regards those who passed the examination within the prescribed chances and period, Rule 8 provides that a senior would retain his original seniority, in the cadre of Mamlatdars even if a person junior to him has passed the examination and also been promoted to the higher post earlier. HRQE is required to be held twice a year as provided by Rule 9. For this purpose, the Collector is required to communicate to the Government, names and particulars of persons belonging to Subordinate Revenue Service who are eligible to appear at the examination strictly according to their seniority as per rules and who desire to appear at the examination under Rule 10 and the Government is required to arrange their names according to their seniority and select about 1500 senior most persons out of the persons from all Districts who are to be allowed to appear at the HRQE. The original figure of 300 in Rule 10 was substituted by 500 by an amendment made on 27th August, 1982 and later by 1500 by an amendment made on 19.2.1988. Under Rule 12 of the HRQE Rules, the selection of candidates who are to be allowed to appear at the examination out of candidates who have exhausted the specified chances is required to be limited to 1/3rd of the total number of 1500 candidates, who are to be selected and allowed to appear at the examination, so that 2/3rd number of seats can be allotted to the candidates desiring to appear at the examination within the specified period. No contention in context of Rules 10 or 12 is raised and therefore, no question arose as regards the Government preparing a list for allowing the candidates to appear at the HRQE. All the persons shown in the impugned list have in fact passed the HRQE and the question really is of the petitioners alleged right to be shown above all the 'late latifs' at the LRQE. So far the HRQ Examination is concerned, as observed above, all the candidates upto serial No. 1945 of this list have passed the HRQE within the specified period and chances and therefore, so far as the placement in context of the HRQE Rules is concerned, the petitioners can have no grievance.

The contention raised on behalf of the petitioners that all the 'late latifs' at the LRQE ought to have been shown below all the regulars is not borne out either by the Rules or by the directions which were given by the Court earlier. Such enblock placement of all 'late latifs' below all regulars was never contemplated and in fact has been frowned upon by the Division bench in its later judgement. The 'late latif' would stand below all his junior regulars who have already passed the examination on the date when he has become eligible and he cannot claim restoration of seniority over such junior regulars who had qualified and become eligible earlier than him. Under Rule 9(2) the persons who pass the LRQE within their specified chances and period though after their juniors, will be placed above such juniors who had qualified earlier. The effect of this is that all persons who are senior to the last regular below whom the 'late latif' stands, will march over him by operation of Rule 9 (2) to be restored above their junior. The process of restoring the seniority of those seniors who passed later than such junior who is in the promotional slot by virtue of his passing the examination earlier and stands above the senior who is a 'late latif', will continue till such seniors exhaust their normal prescribed chances. So long such seniors exhaust their prescribed chances, the 'late latif' stands the disadvantage of their marching over him in order to be placed above their junior by virtue of Rule 9(2). The moment they exhaust their prescribed chance unsuccessfully, they will become unqualified and Rule 7 will take over the situation qua them and those who have passed the examination beyond the prescribed chances i.e. the late latifs. These unqualified persons when they clear the examination beyond the prescribed chances will then become qualified and their seniority position vis-a-vis other late latifs will be governed by the proviso to Rule 7. Thus, a late latif is not perpetually to be pushed down below all the future regulars qualifying after him. Only those who will remain within their prescribed chances i.e. those who have not exhausted their chances at the chance where such 'late latif' had qualified, will get an edge over him till they exhaust their normal chances. Thereafter, he will suffer no further disadvantage. In respect of regulars, who qualify after the late latifs had already qualified and who have no one junior to them already promoted, the question of restoring their seniority in the promotional cadre will not arise, as Rule 9(2) does not apply in such a situation. Therefore, all such regulars who have qualified after the late latif qualified will not be able

to steel a march over him in the promotional list. In this view of the matter, the contention raised on behalf of the petitioners that the late latifs should all be shown below all the regulars, cannot be countenanced. The above proposition is amply borne out by the decision of Division Bench of this Court rendered in Special Civil Application No. 4615 of 1988. The Division Bench in terms held that the pushing down of the late latif by the newcomers will be result of two succeeding examinations only, following the current examination where the concerned late latif passed the examination and extending to a further period spread upto two more such successive examinations and not beyond that period. It was held that this much pushing down in seniority would be suffered by late latifs on account of combined operation of Rules 9 and 7 as interpreted by the Division Bench in the earlier decision but beyond this there was no scope for further pushing down of the late latifs in seniority by the result of further examination which may be held after the two succeeding examinations. Answering point No.4 the Division Bench in terms held that if late latifs and regulars passed in the same examination and if Rule 9 does not operate, then the late latif who is senior to the regular will retain his parent seniority qua such regular also. The Division Bench specifically repelled the contention that even if the junior regulars pass at the same examination alongwith the late latif they must be placed senior to the late latif even though he was senior to them in the parent cadre of clerks, clerk-cum-typists and typists. Thus, the contention that even if regulars pass in the same examination alongwith the late latifs and even if they are junior to them in the parent cadre, while fixing the inter-se seniority in a higher cadre of Deputy Mamlatdars, late latifs must be shown junior to the regulars, was in terms rejected. The Division Bench held that in absence of any applicability of Rule 9, late latifs will be treated as senior to the regulars passing at the same examination, if they are otherwise senior to them, subject to the rider that if on account of operation of Rule 9 a regular who passed the examination is to be placed above the regular, who might have passed earlier, and, in carrying out that exercise, if late latifs are to be pushed down, they will have to be pushed down within the permissible limits of two more chances available to such regulars.

While considering the challenge against the list which was prepared by the District Collector, Valsad in that matter, the Court found that if the petitioner of the cross petition - Special Civil Application No. 4744/86 had any grievance regarding wrong fixation of

their seniority vis-a-vis certain respondents by the impugned provisional list, it was open to them to make suitable representation to the Collector and the Collector would consider their grievance on merits. The point to be noted is that since the cadre of Deputy Mamlatdar is a District level cadre and the earlier directions given by the Division Bench on 16.12.1983 were specifically given to the District Collectors in respect of the arrangement of seniority in context of Rules 7 and 9 of the LRQE Rules, the challenge of the petitioners ought to have been directed if they had any grievance against the district level lists which may have been prepared by the Collectors of their respective Districts. Once the District level list is not questioned, then the position in that list would get reflected while preparing the list of the eligible persons for the post of Mamlatdar on the basis of the passing of the HRQE. The exercise on the basis of LRQE for promotional slot in Deputy Mamlatdars' cadre is to be done districtwise because it is a district cadre. After those lists are stabilised, they are to be pooled together for the State cadre of Mamlatdars and finalised. Common list of qualified persons is required to be prepared on that basis applying the provisions of Higher Revenue Qualifying Examination Rules after following the procedure prescribed by Rule 10 of those Rules. An employee in the District cadre cannot challenge his position in the District list with reference to the position of an employee in other District for which separate seniority list is prepared by the concerned Collector. The vacancies arising in each District in the upper division would be different and the chances of promotion would also vary districtwise. Therefore, a wholesale challenge levelled by these petitioners against the impugned list without reference to their individual position in the respective Districts is wholly misconceived, especially when so far the HRQE Rules are concerned, no late latifs in passing the HRQE is shown above any of these petitioners.

It will be borne in mind that the HRQE and LRQE Rules have a bearing on the incumbent becoming qualified for the promotional post in case of promotees and for continuing in the job in case of direct recruits. These are not Rules of recruitment. The Rules of recruitment for the posts of Mamlatdars and Deputy Mamlatdars are separately framed and the question of recruitment to Mamlatdars' posts and Deputy Mamlatdars' posts will depend upon those provisions. The examination Rules have laid down the requirement of passing the examination to become qualified for the higher post. The examination

has to be passed in the prescribed chances and period. The employee who does not pass it in the prescribed chances and period stands disqualified to hold the promotional post until he passes it and gets qualified. Even when he is so belatedly qualified, he will lose his seniority in the promotional post against those who have already qualified in the prescribed chances at the time when he has qualified. He will also lose seniority in the promotional post against his junior late latifs who have qualified before him and have already been promoted. Finally, he will lose seniority over such of his juniors who have passed in the specified chances and would march over him to be placed above their junior who was promoted earlier having qualified in specified chances prior to them, by virtue of operation of Rule 9(2). As observed above, no further disadvantage is to be suffered by such late latifs. In the illustrations given by the petitioners which are at annexure "Y" with the further affidavit-in-rejoinder filed on 17.6.1996, there is nothing to indicate that incidence of Rule 9(2) would occur. In all the illustrations, the late latifs are senior and their juniors have passed the examination either alongwith them or after them and there is no incidence where such junior regular can claim a march over the late latifs for being placed above his own junior promoted earlier. Therefore, the provisions of Rule 9(2) not being attracted in these illustrations, it cannot be contended that the late latifs should be placed below these regulars.

In paragraph 8 on page 11 of Special Civil Application No. 7158/95, there is reference to late latifs shown in the list above the petitioners and it is contended that all these persons should have been placed below all the petitioners in the impugned list as they had passed the LRQE beyond the prescribed chances and period. As observed above, it is only by virtue of operation of Rule 9(2) that the regulars who have passed subsequent to the senior late latifs can steal a march over them with a view to be placed above their own juniors who were promoted earlier as regulars. The incidence of Rule 9(2) not having occurred in context of these late latifs, so far as the petitioners are concerned, they cannot claim that they should be placed above all these persons. Persons at serial Nos. 50 to 62 had passed at the first examination held in 1978 and their original seniority was required to be maintained. Persons at serial Nos. 100 to 130 had passed in year 1979-80 i.e. prior to 1982. These petitioners had passed the examinations in or after August, 1982 and therefore, persons at serial Nos. 100 to 130 can never

lose their seniority to them. In the same way, so far serial No. 350 to 388 and 1077 - 1098 are concerned, incidence of Rule 9 (2) has not occurred qua these petitioners and therefore, they cannot claim to be placed above them. It was submitted by the learned Additional Advocate General that serial Nos. 1361 downwards were not yet promoted and incidence of Rule 9 has not occurred qua the late latifs. He submitted that if any mistake has crept in through oversight, on being pointed out it will be corrected by the Department.

The petitioners have failed to demonstrate from the list that they have any justifiable claim of being placed above any of their seniors in the list. So far as the inter-se seniority of regulars is concerned, they retain their original seniority in the promotional cadre under Rule 9 of the LRQE Rules and therefore, reference to their original seniority in the list cannot be an irrelevant consideration as sought to be contended on behalf of the petitioners.

The contention that the regulars promoted earlier cannot be reverted by the regulars who have subsequently been promoted flies in the face of Rule 9, and cannot be accepted. The senior persons who passed within the prescribed chances and period have a right to be placed above their juniors who had passed earlier and were promoted earlier. Therefore, senior regulars can replace the junior regulars promoted earlier, if there are no sufficient posts. The promotions given in case of the petitioners were all adhoc and it was specifically stipulated in their promotion orders that they will be liable to be reverted at any time without notice. The promotions were subject to the outcome of the Writ petitions which were pending and reversions were clearly contemplated on re-adjustment of seniority even in the earlier directions given by the Court. It cannot therefore be said that if there are senior persons who have passed their examinations within their prescribed chances and period to man the promotional post, the juniors earlier promoted cannot be pushed down below them. The Scheduled Castes' list is said to have operated upto serial No.355 while the Scheduled Tribes' list has operated upto serial No. 951. Therefore, when senior Scheduled Castes or Scheduled Tribes persons are available by virtue of their having passed the examination within the prescribed chances, their juniors who were earlier promoted against roster points to which they were entitled can always be replaced by them if the operation of the provisions of Rule 9(2) so warrants.

The contention of the learned Counsel for the petitioners that personal hearing ought to have been given before finalising the eligibility list cannot be accepted. The objections were invited against the provisional list and as recorded in the impugned circular they were duly considered. There were about 800 objections and under the circumstances their consideration amounted to sufficient opportunity of being heard to the objectors. The petitioners have not even indicated as to what were their objections to the provisional list. The circular under which the impugned eligibility list is published, shows that the list was prepared keeping in view the relevant criteria under the rules for fixing the seniority of such eligible persons and the Court directives on the subject given earlier.

The learned Counsel for the petitioners contended that it was incumbent upon the respondent authority to give a hearing to the petitioners before passing the impugned orders of their reversion. The impugned orders of reversion was not been passed by way of any punishment. As noted above, these promotions were adhoc and subject to the outcome of the petitions and the directions that may be given by this Court. The Division Bench had, in Special Civil Application No. 4615/86 in terms observed that the respondent authorities will be entitled to fix their inter-se seniority and to operate the list "not only for the purpose of promotion, but also for the purpose of reverting Deputy Mamlatdars once they are promoted according to that list, if promotional posts are subsequently reduced or there are other administrative exigencies requiring such reversions." Even in the earlier decision of the Division Bench rendered on 16.12.1983, it was in terms observed that "the concerned Collectors will have to arrange seniority in the case of Deputy Mamlatdars of the concerned petitioners and other eligible persons under their respective Collectorates in the light of these directions and having arranged seniority of concerned employees accordingly, proper orders of reversion will have to be passed by the concerned authorities". In this view of the matter, the reliance placed on behalf of the petitioners on the decision of the Supreme Court in M.S,Usmani and others Vs. Union of India and ors. reported in (1995) 2 S.C.C 377 is of no avail to them. In Usmani's case, reversion was on the ground of illegality of selection. Appointment in the promotional post was made after selection through a competitive merit examination followed by regularisation and further promotion to even a higher grade on the basis of suitability test. The Department had after a long period

of six years from the date of selection and 5 years from the date of appointment, reverted the appointees to their original bottom seniority without affording any opportunity of being heard. In that context, it was held that reversion of such persons after a lapse of six years from the date of their selection, five years from the date of their appointment, and two years from the date of their promotion in the higher scale, was not warranted. Therefore, that was a case of rights having already accrued and stands on a different footing than the present case where the promotions of the petitioners were purely adhoc and subject to the directions which were to be given by the Court as per which the reversions were required to be effected if they become necessary on readjustment of seniority as per the Rules. The decision of the Single Judge of this Court, Hon'ble Mr. Justice S.A Shah in Special Civil Application No. 661/85 decided on 5th August, 1985 also cannot assist the petitioners because that was a case where there was a change made in the seniority which resulted in reversion of the employee. In the present case, the seniority under the orders of the Court was required to be readjusted following the guidelines issued in light of the Examination Rules. The petitioners cannot have any right to seniority dehors the Rules which have a bearing on seniority and therefore, since no accrued rights of the petitioners to hold a particular position of seniority is shown to have been affected, no personal hearing was required to be given while issuing the orders of their reversion which were warranted by the very orders of their appointment as also by virtue of the directions given by the Division Bench in its aforesaid two judgements.

During the proceedings, in context of a contention raised in an affidavit-in-reply filed by the authorities in another petition stating that there was de-reservation, it was contended that no such dereservation can be made and any dereservation made would be contrary to the constitutional mandate. In paragraph 6 of the further affidavit-in-reply which was filed in Special Civil Application No. 2213/93 to which reference is made on behalf of the petitioners, it was stated that out of 187 roster points for S.T candidates, 89 were dereserved as per the Government Resolution dated 31.1.1976 and total roster points available for S.T candidates were 98. After excluding 53 posts which were required to be filled in by direct recruitment, the total roster points for S.T candidates available were 45. The challenge against de-reservation if any was not the subject matter of this petition and cannot be gone into

in a contention raised at the time of arguments, on the basis of an affidavit in reply filed in Special Civil Application No. 2213/93. There was no challenge directed against any order making dereservation and particulars are wanting in that regard in the petition. No relief against any dereservation has been prayed for and therefore, this Court cannot go into and decide upon that question. In this view of the matter, there is no occasion to apply the ratio of the decision in Sales Tax Commissioner and ors. Vs. B.G.Patel and ors. - 1995 Supplement (1) SCC 429 on which reliance was sought to be placed on behalf of the petitioners. In that case it was found that number of posts reserved for Scheduled Tribes remained unfilled due to lack of persons possessing minimum experience prescribed under the Rule and the respondents had completed 2/3rds of the period specified in the relevant clauses of the Rule. It was therefore observed that instead of dereserving the post for non-availability, the proviso would enable the appointing authority to relax the balance period of experience and consider their claims for appointment by promotion. The decision of the Tribunal and High Court that cases of the respondents required to be considered for promotion in the light of the interpretation given by them was therefore, upheld.

Reliance placed on the decision in Safimiya G. Malek & ors. Vs. State of Gujarat and ors. - Vol.XXXIII (1) : 1992 (1) GLR 704 in which it was held that where Rules made at different times conflict, seniority should be fixed on the basis of continuous service or seniority. In the present case, the Examination Rules clearly indicate as to how seniority is to be worked out amongst regulars and late latifs and adequate directions have been issued by the Division Bench earlier on this specific subject.

The learned Counsel for the petitioners relied upon the decision in K.N.Patel Vs. State of Gujarat 1991 (1) GLH 72 in context of Rules 4 and 6 of the Land Records Qualifying Examination Rules, 1970. It was held that where any persons belonging to the lower division of the subordinate Land Records Service fails to pass the examination within the prescribed number of chances and during the prescribed period, he shall not be eligible for promotion to the higher post, he shall not be confirmed on the said post and he shall lose seniority for the purpose of being promoted to the higher post. Other things being equal, he will get the chance subsequent to his junior who has passed the examination within the prescribed number of chances and during the

prescribed period. The relevant Rule 4 which is reproduced in paragraph 5 of the judgement shows that a person belonging to the lower division of Subordinate Land Records failing to pass the examination in the prescribed chances and during the prescribed period lose seniority and he was not eligible for promotion to the higher post until he passes the examination. Under sub-rule (2) of Rule 5, if a person who is permitted to appear at the examination under proviso second, third and fourth to sub-rule (2) of Rule 3, he shall not rank in seniority higher than those who have passed the examination under the old rules. In this context, it will be noticed that proviso to Rule 7 was substituted on 20.5.1982 in the LRQE Rules and the seniority of a late latifs would be lost only over persons who have been promoted before he became eligible for the post. The learned Judge in paragraph 11 of the judgement in K.N.Patel (supra) noted the material distinction between Rule 4(1) of the LRQE Rules and Rule 6(2) of the Revenue Qualifying Examination Rules. Rule 4(1) provided that if any person fails to pass examination within prescribed number of chances and prescribed period, he shall lose his seniority. It does not provide in which cadre he would lose seniority while Rule 6(2) of the Revenue Qualifying Examination Rules specifically provides that he shall lose his seniority as provided in Rule 7, which mean that the loss of seniority was limited as provided in Rule 7. The learned Single Judge referred to the Division Bench judgement of this Court in Special Civil Application No. 2860 of 1983 decided on 16.2.1983. It was observed in context of what the Division Bench had said on Rule 7, which has been reproduced in paragraph 11 of that judgement, that when an employee passes the examination, he becomes eligible for promotion but he would have no claim of priority for promotion against those who had passed the examination within specified chances and prescribed period and thereby had become eligible prior to the time he became eligible; he cannot claim that he should supersede his juniors who had become eligible earlier on account of his passing examination under extra chances and that he can claim priority over persons who had passed the examination beyond the specified chances and beyond prescribed period, if they are his juniors not promoted. It was observed that even if his juniors who have passed the examination beyond specified chances and prescribed period are promoted prior to his becoming eligible for promotion, he will have no claim for seniority for promotion. The observations of the learned Single Judge are based on the reading of the earlier Division Bench judgement. The operation of Rule 9(2) which has the effect of placing

the senior regulars over their juniors already promoted has been explained in great detail by the Division Bench in the subsequent judgement and there is no observation made in K.N.Patel's case which can be said to be in conflict with the decision of the Division Bench on interpretation of Rules 7 and 9. It has been observed by the Division Bench that proviso to Rule 7(2) operates amongst late latifs and obviously therefore, late latifs who has already been promoted cannot be overtaken by a senior late latif who passed after him. The benefit which is given to a senior regular under Rule 9 over his junior already promoted, is not available to a late latif who is senior, but whose junior late latif has already been promoted. Therefore, there is nothing in the judgement in K.N.Patel's case (supra) which can support any of the petitioners' contentions.

Under the above circumstances, the petitioners have failed to make out any case for setting at naught the impugned list at Annexure "A" to the petition or against the impugned orders of their reversion and the contentions raised by their learned Counsel cannot be accepted. The petitions are therefore, rejected. Rule is discharged in each of them with no order as to costs. Interim relief stands vacated.

At this stage the learned Counsel for the petitioners in both these petitions submits that the petitioners are protected against their reversion from the post of Mamlatdar till today and with a view to enable them to approach the appellate forum, they may be protected till 20.7.1996. This is a just request. The reversion of the petitioners will not operate till 20.7.1996.
